

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

IMI FABI, LLC,

Petitioner,

Civ. Action No.
5:05-MC-0115 (FJS/DEP)

vs.

LUZENAC AMERICA, INC.,

Respondent.

APPEARANCES:

OF COUNSEL:

FOR PETITIONER:

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FOR RESPONDENT:

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JANET A. SAVAGE, ESQ.
ANDREW LOWE, ESQ.

DAVID E. PEEBLES
U.S. MAGISTRATE JUDGE

ORDER

Having successfully sought and obtained an order, issued on January 27, 2006, enforcing a subpoena seeking inspection of certain of petitioner's equipment at its Natural Bridge, New York plant, Dkt. No. 20, respondent Luzenac America, Inc. ("Luzenac"), now seeks enforcement of a second subpoena, issued on February 15, 2006, expanding the scope of that requested inspection to permit examination not only of the equipment used to produce, test or modify various products, including a line of talc products marketed under the trade name of "Genera", but additionally to inspect the process, in operation, utilized for the manufacture of that product. Petitioner IMI Fabi, LLC ("IMI Fabi") has opposed the requested expansion on a number of bases including, *inter alia*, the untimeliness of the subpoena pursuant to scheduling orders issued by a United States Magistrate Judge in the District of Colorado, and the failure of Luzenac to make an adequate showing of the need for access to such trade secret information. IMI Fabi has also requested that if the inspection go forward, that the inspection occur subject to several conditions.

The issues currently before the court have been briefed, and oral argument was conducted on February 27, 2006 with regard to the most recent dispute in this matter. At the close of argument I issued a bench decision, which is incorporated herein by reference, granting Luzenac's motion conditioned upon the entry of a protective order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, as discussed in my earlier order. Based upon the foregoing, it is hereby

ORDERED as follows:

- 1) The motion of respondent Luzanec America, Inc., for enforcement of a subpoena dated for February 15, 2006 is GRANTED, subject to the conditions listed below.
- 2) In the event that the United States District Court for the District of Colorado rules that the February 15, 2006 subpoena was untimely, then enforcement of that subpoena is hereby DENIED, and any inspection of the IMI Fabi facility in Natural Bridge, New York, shall occur in accordance with the December 1, 2005 subpoena, returnable on December 14, 2005, and this court's order dated January 27, 2006.
- 3) Representatives of Luzenac shall be permitted to photograph and/or videotape the inspection, subject to the requirement that the

photographer and/or videographer agree to be bound by the protective order and to further certify to petitioner's counsel the total number of photographs taken and/or amount of video footage filmed.

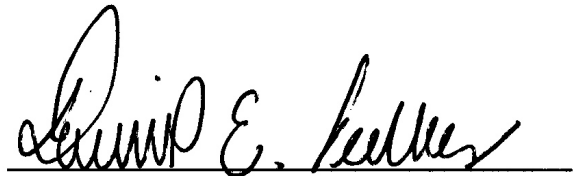
4) Petitioner's request for reimbursement of expenses incurred as a result of the inspection is DENIED.

5) Petitioner's request that those persons participating in the inspection sign a hold harmless agreement in which they promise to indemnify IMI Fabi for any injuries suffered during the inspection is DENIED.

6) Those participating in the inspection shall be limited to attorneys representing Luzenac in the Colorado action and the expert and/or expert's representatives, and shall not include any attorneys or experts representing Luzenac elsewhere, including in the Northern District of West Virginia, absent mutual agreement of the parties to the contrary.

7) Respondent's application for an award of costs and attorneys' fees associated with the instant motion is DENIED.

Dated: March 3, 2006
Syracuse, NY

A handwritten signature in black ink, appearing to read "David E. Peebles", written over a horizontal line.

David E. Peebles
U.S. Magistrate Judge

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